



HIGH COURT'S SPILL ACT STATUTE OF LIMITATIONS RULING ALTERS NEW JERSEY'S CLEANUP LANDSCAPE

by David Restaino

When private parties litigate environmental remediation claims, must a plaintiff file suit within a certain time? This question was answered in the negative by the New Jersey Supreme Court earlier this year in a case that will have a lasting impact on the cleanup of toxic waste in New Jersey.

The New Jersey Spill Compensation and Control Act (Spill Act),¹ which was originally designed to remedy off-shore oil spills, has been amended many times in response to society's broader concern over toxic discharges on land. One of these amendments converted the Spill Act into New Jersey's analogue to the federal Comprehensive Environmental Response Compensation and Liability Act (CERCLA),² by including a private right of contribution within the law.

Over time, the New Jersey legislature further amended the Spill Act so that only certain, specified defenses were available to a contribution defendant: acts caused by war, sabotage, or God, as well as innocent purchaser protections available to qualifying persons.³ The Spill Act was noticeably silent as to whether a contribution defendant could claim the statute of limitations defense. Nevertheless, federal courts interpreting New Jersey law had, at times, determined that a general six-year limitations period applied to contribution actions. On the other hand, at least one New Jersey court decision had found that a similar concept regarding the time in which to bring claims, a "statute of repose," would not apply to Spill Act claims.⁴

As a result of the patchwork nature of the Spill Act and the differing court interpretations, affected parties were often left to make practical judgments in response to potential cleanup claims. Potential defendants could assume that no limitation existed on their being sued, although they had some arguments to the contrary. Similarly, potential plaintiffs could assume that their claims might be forever barred after six years, although they could also argue otherwise. The New Jersey Supreme Court has now resolved these issues in *Morristown Associates v. Grant Oil Co.*⁵

Morristown Associates involved a strip-mall shopping center which, as many do, included a dry cleaning business as a tenant. Many decades ago, the cleaner added a boiler and an underground storage tank (UST) to hold fuel oil for it. The pipes leading to the UST leaked and the property owner eventually discovered the contamination. In response, the owner sued a variety of heating oil companies that had delivered fuel oil and those companies, in turn, sued two dry cleaners as third-party defendants. The trial court held that the Spill Act contribution claims were subject to a six-year statute of limitations for injury to real property, conducted a hearing on when the owner-plaintiff should have discovered the contamination, and then dismissed the claims. An appellate court affirmed the dismissal—and plaintiff appealed to the New Jersey Supreme Court.

¹ N.J.S.A. 58:10-23.11 *et seq.*

² 42 U.S.C.A. § 9601 *et seq.*

³ N.J.S.A. 58:10-23.11g(d).

⁴ *Pitney Bowes, Inc. v. Baker Industries, Inc.*, 277 N.J. Super. 484, 649 A.2d 1325 (App. Div. 1994).

⁵ 220 N.J. 360, 106 A.3d 1176 (2015), available at <http://njlaw.rutgers.edu/collections/courts/supreme/a-38-13.opn.html>.

The plaintiff in *Morristown Associates* emphasized that the Spill Act is silent as to a statute of limitations other than an express list of available defenses that did not include a time limitation. The plaintiff also relied on numerous Spill Act amendments enacted after the contribution provision, as well as other Spill Act provisions that do explicitly include a limitations period, in support of the argument that no limitations period applied here.

The defendants sought application of a six-year limitations period that applied to comparable actions at common law. They presumed that the legislature was aware of this other provision when enacting the Spill Act's contribution clause, cited to cases in favor of the defendants' approach, and posited that a statute of limitations was akin to other procedural defenses that need not be enumerated in a statutory enactment. They also offered the policy argument that imposing a limitations period would encourage the timely remediation of contaminated properties.

A number of *amici curiae* parties also filed briefs, including "innocent landowners," the New Jersey Bar Association and the state Department of Environmental Protection. The arguments offered by each varied, but included claims that:

- Contaminated-site investigation is a lengthy process;
- Innocent landowners would be left to clean up contamination caused by others;
- A limitations period would impede the ability to collect from wrongdoers;
- The burden of cleanup might be shifted to local taxpayers if a limitations period applied; and,
- Resources would be shifted from cleanups to litigating the timeliness of claims.

The Supreme Court focused on the numerous amendments to the Spill Act—highlighting the amendment which created the private right of contribution—and concluded that the legislature had intended to limit the common law and statutory defenses. More specifically, the court held that the language restricting the available defenses evinced intent to refrain from imposing time limitations on a plaintiff's right to sue for contribution. The court added that, as a matter of policy, it could not imagine the legislature frustrating the imposition of liability on culpable dischargers by allowing for a general—but unreferenced—statute of limitations to defeat otherwise viable claims. Finally, the Supreme Court added that its decision would not unsettle a long-standing approach to Spill Act liability because its decision was consistent with an appellate ruling in *Pitney Bowes, Inc. v. Baker Industries, Inc.*⁶

The ramifications of *Morristown Associates* will be felt by plaintiffs and defendants alike. With regard to Spill Act plaintiffs, it is often difficult for them to identify all parties who may have contributed to the contamination and, now, the time to identify additional defendants has certainly increased. Defendants, on the other hand, now know that they can be subject to suit for many years and perhaps even decades.

The decision also provided some clarity about non-legislative defenses. Specifically, the *Morristown Associates* court held that defenses established by rules under the jurisdiction of the court are not subject to overriding legislation. The Supreme Court provided examples such as venue, service of process, and subject matter jurisdiction. Other, particular requirements found in the New Jersey Court Rules would presumably be treated the same—for example, mandatory party-joinder and "entire controversy" claims-joinder rules.

Broader changes may also be in the offing as a result of the *Morristown Associates* decision. One can expect that the potential for unending environmental liabilities will become an even more important topic for consideration during property and corporate transactions. Those practitioners who fail to consider environmental liabilities that will follow a company decades after a property or a business has been sold will do so at their own peril.

⁶ *Supra* note 4.